

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LORI BARNES, SP 2013-SU-035 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit roofed deck to remain 7.2 ft. and open deck to remain 7.5 ft. from rear lot line. Located at 13761 Royal Red Ter., Chantilly, 20151, on approx. 13,571 sq. ft. of land zoned R-2 (Cluster) and WS. Sully District. Tax Map 44-4 ((12)) 28. (Continued from 7/31/13.) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 18, 2013; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. It appears that the applicant was shown a design that she agreed to and was, in fact, constructed, in the record before the Board, it also seems to appear that the different footprint was presented to the building contract, which failed the setback requirements.
3. This is a difficult case in some ways.
4. In reading the Ordinance, it seems like the main provision of concern is that the non-compliance was done in good faith or through no fault of the property owner.
5. That section is a little bit ambiguous in some ways, but at least the applicant and her husband acted in good faith and thought that they had gotten what they had contracted for.
6. This may not be a result that the County Board had intended when they adopted that section of the Ordinance, but it seems to apply.
7. The Board has determined that the applicant has satisfied Subsections A through G.
8. Besides satisfying Subsection B, also D is applicable. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity.
9. The addition backs up to park land or a narrow strip of park land, so it does not impact the neighbors in a detrimental way.
10. In any event, it satisfies the remainder of the statute.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

- 1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
- 2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

- 1. This special permit is approved for the locations of the roofed deck and open deck as shown on the plat prepared by William E. Ramsey, P.C., titled "Special Permit, Lot 28, Maple Hill Estates," dated December 17, 2012, as revised through May 28, 2013, as submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Beard seconded the motion, which carried by a vote of 5-0. Mr. Hart and Mr. Byers recused themselves from the hearing.

A Copy Teste:

A handwritten signature in cursive script, appearing to read "K.A. Knoth", written in dark ink.

Kathleen A. Knoth
Clerk to the Board of Zoning Appeals